

* This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

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B. Size Determination No. 3-2006-58

On May 3, 2006, in a letter sent directly to the CO, Appellant stated that it was a joint venture between Ironclad Services, Inc. (Ironclad) and Enfield Enterprises Inc. (EEI). Appellant stated that while Ironclad was within the size standard, EEI exceeded the size standard. Appellant stated that it thought such a joint venture was permissible. Appellant also informed the CO it wished to be considered for the unrestricted portion of the RFP.

Additionally, Appellant sent a letter to the Area Office in response to the protest, undated, but received on May 16th. Appellant stated that it did not contest the protest and that it did not qualify as a small business. Appellant apologized for its mistake and requested the award to it be rescinded. Appellant failed to provide the Area Office with an SBA Form 355.

On May 17, 2006, the Area Office issued Size Determination No. 3-2006-58 concluding Appellant was other than small based upon Appellant's letter to the Area Office in which it conceded it was not small. Appellant received the size determination that same day via facsimile.

C. The Appeal

On June 13, 2006, Appellant filed the instant appeal. Appellant bases its appeal on the grounds that ESA was not among the 5-7 lowest offerors in the SDVO category, had no chance for an award, and thus was not an interested party with a right to protest.

On June 28, 2006, ESA responded to the appeal. ESA asserts the appeal is untimely, fails to state a basis for appeal on the merits, and should be dismissed. ESA also states that it is an interested party because it is a competing offeror for this procurement.

II. DISCUSSION

Appellant failed to file the instant appeal within 15 days of receiving the size determination, and thus the appeal is untimely for this procurement. 13 C.F.R. § 134.304(a)(1). Further, even if the appeal were timely, Appellant has already conceded it is other than small. Finally, Appellant's ground for appeal is meritless. Appellant makes the unsupported assertion that ESA is not among the finalists for award. However, a size protestor need not be among the finalists for award. A size protestor need only be an offeror whom the CO has not eliminated for reasons unrelated to size. 13 C.F.R. § 121.1001(a)(1)(i).

The instant appeal is both untimely and meritless, and is thus DISMISSED.

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III. CONCLUSION

For the above reasons, I AFFIRM the Area Office's size determination and DISMISS the instant appeal.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(b).

CHRISTOPHER HOLLEMAN
Administrative Judge